Docket No. MED5001USPCT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	: Volker Bodecker	Confirmation No.:	6589
Appln. No.	: 10/579,265	Art Unit :	3736
Filed	: 05-04-2007	Examiner :	Stout, Michael C
Title	: Implant For Intracorporal, Telemetric Measurement		

CERTIFICATE OF TRANSMISSION			
I hereby certify that this correspondence is being electronically filed via EFS-Web to the Commissioner for Patents with the U.S. Patent and Trademark Office on: 8 June 2010			
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Signature	/Crystal Washington/	Date	6/8/2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is filed in response to the Notice of Appeal, which was mailed by Appellant to the U.S. Patent & Trademark Office on March 4, 2010.

Real Party In Interest:

The real party in interest for this patent application is Medos International S.a.r.l., Rue Girardet 29, 2400 Le Locle, Switzerland a wholly owned subsidiary of Johnson & Johnson, a New Jersey corporation.

Related Appeals and Interferences:

There are no related appeals or interferences known to Appellant, the Appellant's legal representative, or the Assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

Status of Claims:

Claims 2, 7, 15 and 17 have been cancelled.

Claims 1, 3-6, 8-14, 16 and 18 are pending, have been finally rejected, and are hereby appealed.

Status of Amendments:

No amendments have been filed after the final rejection of December 4, 2009.

Summary of Claimed Subject Matter:

Independent Claim 1

The present invention, as exemplified by independent claim 1 is directed to an implant comprising a sensor device 1 being fixedly connected to a first end of a longitudinal carrier 3. (See, *e.g.,* page 3, lines 22-24, Figure 3) An inductive coil 2 is connected to sensor device 1 via electrical connection lines 4 arranged on longitudinal carrier 3 and covering 5 encapsulates sensor device 1, carrier 3 with connection lines 4 and coil 2. (See, *e.g.,* page 3, lines 22-24 and See, *e.g.,* page 4, lines, 6-7; Figures 1-2) The carrier 3 has a sufficient rigidity such that the sensor device is adapted to be

guided by carrier 3 during implantation to a target position and held in position at the target position. (See, *e.g.,* page 4, lines 1-4) Covering part 6 has means for providing a subcutaneous fastening. (See, *e.g.,* page 4, lines 7-9) Carrier 3 is in a substantially planar shape and moves from said planar shape to a shape wherein the carrier is arranged at an angle from 60° to 120° relative to the plane in which the coil windings of the inductive coil are arranged. (See, *e.g.,* page 4, line 31 and page 5 lines 1-8, Figure 2)

Grounds of Rejection To Be Reviewed On Appeal:

A) Whether the final rejection stating that claims 1, 3-6, 8-15, 16 and 18 are unpatentable under 35 U.S.C. 103(a) should be reversed.

Argument:

Rejection of claims 1, 3-6, 8-15, 16 and 18 under 35 USC 103(a)

The Examiner has finally rejected claims 1, 3-6, 8-15, 16 and 18 under 35 U.S.C. 103(a) as being unpatentable over Brehmeier-Flick et al. (US 6083174) (hereinafter referred to as "Brehmeier-Flick") in view of Jeffries et al. (US 6193656) (hereinafter referred to as "Jerffries") and B-Flick et al. "Study and Development of a Portable Telemetric Intracranial Pressure Measurement Unit." 19th International Conference Proceedings, IEEE/EMBS Oct. 30 - Nov. 2, 1997 Chicago, IL USA (hereinafter referred to as "the IEEE paper").

The carrier of the present invention is disclosed, in the specification, including, for example, page 4, lines 29-30 and, for example, the drawings, including Fig. 1, as being formed as a substantially planar carrier. Thereafter, for example, at the time of

implantation, the carrier moves from the planar shape to a shape wherein the carrier is arranged at an angle from 60° to 120° relative to the plane in which the coil windings of the inductive coil are arranged. One example of such a position is shown in Fig. 2. Such a structure is not taught or suggested by either Brehmeier-Flick, Jeffries nor the IEEE paper. In Brehmeier-Flick the cranial measuring system is placed on top of the outer surface of the skull to measure the cranial pressure through a bore drilled through the skull. Thus, at most the sensor assembly is curved to conform to the outer surface of the skull. But Brehmeier-Flick's sensor assembly is not moved from a planar shape to a shape wherein the carrier is arranged at an angle from 60° to 120° relative to the plane in which the coil windings of the inductive coil are arranged. Applicant's further maintain that Brehmeier-Flick teaches away from providing a sensor assembly that moves from a substantially planar position to a bent position as recited because such a structure would not conform to the outer surface of the skull.

The claims now require that the carrier is initially in a substantially planar shape and is thereafter moved to a shape arranged at an angle from 60° to 120° relative to the plane in which the coil windings of the inductive coil are arranged. As such, Applicant's maintain that Brehmeier-Flick teaches away from providing a sensor assembly that it is bendable as recited because such a structure would not conform to the outer surface of the skull. Brehmeier-Flick states that "This way, the hole to be drilled into the top of the skull can be of a smaller diameter than before. Furthermore, only a very small cut of the skin is required because the foil 3, with the sensor element 1 and the telemetry unit 2 arranged on top, is very narrow." Clearly, Brehmeier-Flick is concerned about maintaining the size of the bore through the skull as small as possible as well as maintaining the size of the sensor assembly as small as possible as well. Thus, providing a sensor assembly that is bendable would require the sensor assembly to be disposed within the bore in the skull thereby increasing the size of the bore. Therefore, Brehmeier-Flick teaches away from providing a sensor assembly that moves as recited in the present claims.

Conclusion:

For the reasons discussed above, Appellants maintain that the Examiner's final rejection of claims 1, 3-6, 8-14, 16 and 18 under 35 USC § 103(a) should be reversed.

Respectfully submitted,

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Claims Appendix

An appendix containing a copy of the claims involved in the appeal.

1. (Previously Presented) An implant comprising

a sensor device being fixedly connected to a first end of a longitudinal carrier;

an inductive coil connected to the sensor device via electrical connection lines that are arranged on the longitudinal carrier; and

a covering encapsulating the sensor device, the carrier with the connection lines and the coil;

wherein the carrier has a sufficient rigidity such that the sensor device is adapted to be guided by the carrier during implantation to a target position and held in position at the target position, and that the covering part has means for providing a subcutaneous fastening, the carrier is in a substantially planar shape and moves from said planar shape to a shape wherein the carrier is arranged at an angle from 60° to 120° relative to the plane in which the coil windings of the inductive coil are arranged.

2. (Canceled)

3. (Previously Presented) The implant according to claim 1, wherein there are provided two connection lines between the coil and the sensor device.

4. (Previously Presented) The implant according to claim 1, wherein the carrier is flat.

5. (Previously Presented) The implant according to claim 1, further comprising a stiffening foil being provided in the covering part.

6. (Previously Presented) The implant according to claim 5, wherein the carrier is formed as at least one of a rod and a foil.

7. (Canceled)

8. (Previously Presented) The implant according to claim 1, wherein a frame is fastened at the first end of the carrier , the sensor device positively fits within the frame.

9. (Previously Presented) The implant according to claim 8, wherein the frame is formed one piece with the carrier .

10. (Previously Presented) The implant according to claim 1, wherein the carrier is formed as a common carrier for the electrical connection lines and the coil windings.

11. (Previously Presented) The implant according to claim 1, wherein the sensor device comprises at least one pressure sensor.

12. (Previously Presented) The implant according to claim 1, wherein the covering part encapsulating the coil is adapted to be arranged in an interior of the brain.

13. (Previously Presented) The implant according to claim 12, wherein the encapsulating material of the covering part covering the sensor device is formed as a pressure transmitting medium.

14. (Previously Presented) The implant according to claim 1, wherein the sensor device is adapted to be positioned for at least one of an intraparenchymal and a intraventricular pressure measurement.

15. (Canceled)

16. (Previously Presented) An implant according to claim 12, wherein the covering part encapsulating the coil is adapted to be arranged in the epidural.

17. (Canceled)

18. (Previously Presented) An implant according to claim 13, wherein the carrier is bendable substantially about a line adjacent to said inductive coil.

Evidence Appendix

No evidence has been submitted by Appellant pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 during the prosecution of this application. Nor has any other evidence been entered by the Examiner and relied upon by Appellant in the appeal.

Related Proceedings Appendix

Pursuant to 37 C.F.R. 41.37(c)(1)(ii), Appellant, the Appellant's legal representative, or the Assignee is not aware of any decisions that have been rendered by a court or the Board in any proceeding that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.